

48A C.J.S. Judges § 336

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

E. Effect of Disqualification of Judge

§ 336. Scope and extent of judge's authority after disqualification

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

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As a general rule, the disqualification of a judge relates only to judicial acts or to acts which call for the exercise of judicial discretion and does not prevent the judge from performing, or necessarily render invalid, mere formal preliminary or ministerial acts.

As a general rule, disqualification of a judge relates only to judicial acts or to acts which call for the exercise of a judicial discretion¹ or to those acts which could be influenced by bias and interest and which will affect defendant's rights.² Thus, a disqualified judge is without authority to approve an appeal bond³ or to determine inability to give security for appeal costs.⁴ The judge is without authority to entertain various motions,⁵ issue orders,⁶ preside over the selection of the jury panel,⁷ or deal with disputed issues.⁸

A judge's disqualification, however, does not prevent the judge from performing, or necessarily render invalid, mere formal preliminary or ministerial acts⁹ or acts of an administrative nature.¹⁰ Thus, the judge may act, sometimes because of express provision of the statute, on matters not requiring discretion¹¹ or on such routine matters incident to the disposition of the case as do not affect the merits of the case.¹² Such matters include regulation of the order of business,¹³ reducing earlier rulings to writing,¹⁴ arrangement of the calendar,¹⁵ receiving indictments,¹⁶ and setting the case for trial.¹⁷

Disqualification from presiding over a particular case does not disqualify the judge from otherwise holding the part of the term which is occupied by the trial of such case and disposing of other business pending on the docket,¹⁸ or from ruling on those matters then under submission.¹⁹ A judge who disqualifies himself or herself in a criminal prosecution because of relationship is

qualified to hear a contempt proceeding against the person accused in the criminal case, based on accused's statements regarding such judge.²⁰

CUMULATIVE SUPPLEMENT

Cases:

Assigned judge lost all authority to decide substantive matters upon recusing himself, including whether he should have recused himself after all, and thus, judge could not rescind his recusal and issue judgment in dissolution proceeding; although there was no record of recusal in the record, wife's attorney made statements during hearing that implied that he agreed that judge announced that he was recusing himself because his nephew was an attorney at the same law firm as wife's attorney's, when the judge announced his recusal, wife's attorney asked him to reconsider, and several days later, the judge announced that he had consulted with the chief judge and decided to rescind his recusal, and judge did not obtain remittal for reinstatement from parties. Ill. Sup. Ct. R. 63; 735 Ill. Comp. Stat. Ann. 5/2-1001(a)(3)(iii). *In re Marriage of Peradotti*, 2018 IL App (2d) 180247, 427 Ill. Dec. 305, 117 N.E.3d 1242 (App. Ct. 2d Dist. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 Ariz.—*King v. State*, 91 Idaho 97, 416 P.2d 44 (1966).

D.C.—*Matter of Evans*, 450 A.2d 443 (D.C. 1982).

W. Va.—*Stern Bros., Inc. v. McClure*, 160 W. Va. 567, 236 S.E.2d 222 (1977).
- 2 **Determination by judge of voluntariness of guilty plea**
Alaska—*Gieffels v. State*, 552 P.2d 661 (Alaska 1976) (disapproved of on other grounds by, *Miller v. State*, 617 P.2d 516 (Alaska 1980)).
- 3 Tex.—*Koll v. State*, 143 Tex. Crim. 104, 157 S.W.2d 377 (1941).
- 4 Tex.—*Wells v. Arledge*, 259 S.W. 991 (Tex. Civ. App. Texarkana 1924).
- 5 Alaska—*Nelson v. Fitzgerald*, 403 P.2d 677 (Alaska 1965).

Ind.—*Weer v. State*, 219 Ind. 217, 36 N.E.2d 787 (1941).
- 6 Mo.—*State v. Bailey*, 344 Mo. 322, 126 S.W.2d 224 (1939).

Or.—*State ex rel. Brookfield Co. v. Mart*, 135 Or. 603, 295 P. 459 (1931).

Tex.—*Milan v. Williams*, 119 Tex. 60, 24 S.W.2d 391 (Comm'n App. 1930).
- 7 Okla.—*Dickson v. State*, 67 Okla. Crim. 365, 94 P.2d 258 (1939).

Tex.—*Koll v. State*, 143 Tex. Crim. 104, 157 S.W.2d 377 (1941).
- 8 **Calendaring and bail**
Alaska—*Gieffels v. State*, 552 P.2d 661 (Alaska 1976) (disapproved of on other grounds by, *Miller v. State*, 617 P.2d 516 (Alaska 1980)).

- 9 Fla.—*Fernwoods Condominium Ass'n #2, Inc. v. Alonso*, 26 So. 3d 27 (Fla. 3d DCA 2009).
- Miss.—*Sharplin v. State*, 357 So. 2d 940 (Miss. 1978).
- Tex.—*Fuelberg v. State*, 410 S.W.3d 498 (Tex. App. Austin 2013).
- Confirmation of election of judge by parties**
- Tex.—*In re Gonzalez*, 115 S.W.3d 36 (Tex. App. San Antonio 2003).
- Assigning another judge to case or transferring case to judge**
- Ark.—*Kelly v. Mississippi County Circuit Court*, 374 Ark. 396, 288 S.W.3d 243 (2008).
- Wash.—*Skagit County v. Waldal*, 163 Wash. App. 284, 261 P.3d 164 (Div. 1 2011).
- Reducing prior oral ruling to writing**
- Fla.—*Ross v. Ross*, 77 So. 3d 238 (Fla. 4th DCA 2012).
- Neb.—*In re Trust by Crawford*, 20 Neb. App. 502, 826 N.W.2d 284 (2013).
- Bail questions may generally be decided by preempted judge**
- Alaska—*Gieffels v. State*, 552 P.2d 661 (Alaska 1976) (disapproved of on other grounds by, *Miller v. State*, 617 P.2d 516 (Alaska 1980)).
- 10 Alaska—*Gieffels v. State*, 552 P.2d 661 (Alaska 1976) (disapproved of on other grounds by, *Miller v. State*, 617 P.2d 516 (Alaska 1980)).
- Kan.—*Collins v. Kansas Milling Co.*, 210 Kan. 701, 504 P.2d 586 (1972).
- 11 U.S.—*Clarke v. Chicago, B. & Q.R. Co.*, 62 F.2d 440 (C.C.A. 10th Cir. 1932).
- Fla.—*Parker v. State*, 873 So. 2d 270 (Fla. 2004).
- Mo.—*State ex rel. Browning v. Kelly*, 309 Mo. 465, 274 S.W. 731 (1925).
- 12 Mo.—*State ex rel. Nickerson v. Rose*, 351 Mo. 1198, 175 S.W.2d 768 (1943).
- Okla.—*Smith v. Bogart*, 1940 OK 420, 188 Okla. 176, 107 P.2d 173 (1940).
- Or.—*State v. Nagel*, 185 Or. 486, 202 P.2d 640 (1949).
- Tex.—*Gilbreth v. State*, 124 Tex. Crim. 465, 63 S.W.2d 560 (1933).
- Attorney's motion to withdraw**
- D.C.—*Thornton v. U. S.*, 357 A.2d 429 (D.C. 1976).
- Calling special term**
- Tex.—*U.S. Fidelity & Guaranty Co. v. Henderson County*, 253 S.W. 835 (Tex. Civ. App. Beaumont 1923), writ granted, (Oct. 24, 1923) and aff'd, 276 S.W. 203 (Tex. Comm'n App. 1925).
- 13 Mont.—*Fuller v. Gibbs*, 122 Mont. 177, 199 P.2d 851 (1948).
- Or.—*State v. Nagel*, 185 Or. 486, 202 P.2d 640 (1949).
- "Housekeeping" orders**
- U.S.—*In re BellSouth Corp.*, 334 F.3d 941 (11th Cir. 2003).
- 14 Fla.—*Fuchs v. Fuchs*, 840 So. 2d 449 (Fla. 4th DCA 2003).

- 15 Alaska—Gieffels v. State, 552 P.2d 661 (Alaska 1976) (disapproved of on other grounds by, Miller v. State, 617 P.2d 516 (Alaska 1980)).
- Mont.—Williams v. Widows and Orphans Home, Veterans of Foreign Wars, of Eaton Rapids, Mich., 140 Mont. 259, 373 P.2d 948 (1962).
- N.M.—State v. Compton, 1953-NMSC-036, 57 N.M. 227, 257 P.2d 915 (1953).
- 16 Mo.—State v. Selle, 367 S.W.2d 522 (Mo. 1963).
- Or.—State v. Nagel, 185 Or. 486, 202 P.2d 640 (1949).
- 17 Alaska—Gieffels v. State, 552 P.2d 661 (Alaska 1976) (disapproved of on other grounds by, Miller v. State, 617 P.2d 516 (Alaska 1980)).
- Kan.—Collins v. Kansas Milling Co., 210 Kan. 701, 504 P.2d 586 (1972).
- Mont.—Gibbs v. Fuller, 120 Mont. 516, 188 P.2d 426 (1948).
- 18 Ky.—Com. ex rel. Breckinridge v. Murphy, 351 S.W.2d 513 (Ky. 1961).
- Okla.—Johnson v. Johnson, 1967 OK 16, 424 P.2d 414 (Okla. 1967).
- 19 Mo.—West v. Moran, 586 S.W.2d 68 (Mo. Ct. App. E.D. 1979).
- Mont.—State ex rel. Cline v. District Court of Fourth Judicial Dist. In and For Missoula County, 142 Mont. 278, 384 P.2d 490 (1963).
- Jurisdiction over prior matters; award of attorney's fees.**
- U.S.—Cornist v. Richland Parish School Bd., 495 F.2d 189 (5th Cir. 1974).
- Motion to correct errors**
- Ind.—Nissen Trampoline Co. v. Terre Haute First Nat. Bank, 265 Ind. 457, 358 N.E.2d 974 (1976).
- Necessary temporary orders in interest of justice**
- Ariz.—State v. Fisher, 23 Ariz. App. 293, 532 P.2d 868 (Div. 2 1975).
- Restraining orders**
- Ind.—Smith v. Indiana State Bd. of Health, 158 Ind. App. 445, 303 N.E.2d 50 (1973).
- Minn.—Minnesota State Bar Ass'n v. Divorce Ed. Associates, 300 Minn. 323, 219 N.W.2d 920 (1974).
- 20 Ga.—Cobb v. State, 59 Ga. App. 695, 2 S.E.2d 116 (1939).